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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/326,014	06/04/1999	M. FRANCIS BOTTS	MOAR:100-41-	3572

7590

06/03/2002

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EXAMINER

LEVY, NEIL S

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 06/03/2002

18

Please find below and/or attached an Office communication concerning this application or proceeding.



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DATE MAILED:

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

Responsive to communication(s) filed on 2/28/02

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

Shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 36(a).

Disposition of Claims

- ☒ Claim(s) 1-51 is/are pending in the application.
- Of the above, claim(s) 19-35 is/are ~~withdrawn from consideration~~ cancelled.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-18, 36-51 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claims _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) _____.
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

Certified copies not received: _____

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☐ Notice of Reference Cited, PTO-892
- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

Receipt is acknowledged of amendment of 2/28/02.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-18, 36-51 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant has not indicated wherein the specification support lies for the negative limitation now in all-independent claims.

Applicants citation does not include a recitation of the facts of the instant case, thus, is not seen as a basis to override case law—In re Grasseli, 218 USP 269 and In re Schechter et al 98 USPQ 144, stating that a negative limitation may not be inserted in order to get around prior art.

Examiner suggests in order to exclude, recite, "consisting of" and disclose the matrix polymers of claim 7 and triazoles of claim 2.

Claims 7, 45 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear how the claims further limit claim 1 and 36 since "vinyl polymer" puts back the polyethylene taken out.

Claims 1, 7-12, 17, 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Autant et al FR 2702929.

The rejection of record is maintained.

Polymers other than polyethylene may be used. The matrices of Autant are polymers of MW 500-3000.

Claims 1-18, 36-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsuei et al 5589194 in view of, Autant and further in view of Kanda 0201214, stock, admission of applicant's at page 1, 2 of specification and Russell et al WO 90103732.

The rejection of record is maintained.

Applicant's arguments that the references are irrelevant and unexpected results are shown are not persuasive. We see the references as showing many compounds, not just triazoles as less toxic to non target species when entrapped in polymer—that is what the references show, with art recognized actives and polymers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 308-2412. The examiner can normally be reached on Tuesday- Friday 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on 308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are 305-4556 for regular communications and 305-3592 for After Final communications.

Art Unit: 1616

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1235.

Levy: mv
May 21, 2002

A handwritten signature in black ink, appearing to read "Neil S. Levy". The signature is fluid and cursive, with the first name "Neil" and last name "Levy" clearly distinguishable.

NEIL S. LEVY
PRIMARY EXAMINER